IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.5045 of 2005

Date of Decision: September , 2007

Mahavir .....Appellant

Versus

Mohinder Singh and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Ramesh Hooda, Advocate for the appellant.

Mr.Sidharth Batra, Assistant Advocate General, Haryana for respondent No.3.

S. D. ANAND, J.

1. Two FAO i.e. Nos.5045 and 5046 of 2005 have been preferred by the appellant who was held accountable by the Tribunal for having caused the impugned accident, in the course whereof Sombir, a milk vendor aged 17 years and Phool Singh, an Auto Mechanic and milk supplier aged 22 years, had died. Petition No.226 was filed by the parents of Sombir deceased. Petition No.227 was filed by the parents of Phool Singh deceased. The Tribunal awarded a compensation of Rs.2,02,000/- to the parents of Sombir deceased. A compensation of Rs.2,20,024/- was awarded to the parents of Phool Singh deceased. The petitioners in both the petitions were ordered to have the compensation in equal shares, with interest @ 6% per annum from the date of filing of the petition till the realisation thereof. The learned Tribunal held that the amount of

compensation shall be payable by the driver only as the impugned accident occurred in the course of driving of the offending official vehicle when he was not performing official duty.

2. Mr.Ramesh Hooda, learned counsel for the driver-appellant, argued that the appellant could not be individually held liable to pay the amount of compensation in view of the fact that, at the relevant point of time, he was proceeding in the official vehicle to collect a tyre which had been given earlier for vulcanizing. In support of the plea, he pointed out that the relevant averment had been made by him in the course of his affidavit which was tendered into evidence in lieu of Examination-in-Chief.

3. The learned State counsel countered the plea, advocated on behalf of the appellant, by pointing out that the reply filed by the appellant does not at all make mention of that fact and that, on that account, any averment made in the course of the affidavit, cannot be read into evidence.

4. There cannot be any manner of reservation about the proposition that evidence beyond the scope of pleadings cannot be considered by the Tribunal. In that view of things, it is not open to the appellant to raise the plea aforementioned.

5. It was, then, argued by the learned counsel for the appellant that it was inappropriate for the learned Tribunal to hold the appellant accountable for the causing of the impugned accident in view of the fact that the appellant had been crying hoarse before his employer that the official vehicle should be got insured. Inspite thereof, the argument proceeded, the District Public Relations Officer concerned did not get the vehicle insured. The plea raised thereby was that in case the official vehicle had been under insurance cover, the Insurer would have paid up the compensation awarded.

6. The plea raised is neither here nor there. Apart therefrom, it is patently speculative in character. It is to state the obvious that if an offending vehicle is under insurance cover, the Insurer would be liable to indemnify the insured. However, in the present case, the offending vehicle was not under insurance cover. The driver-appellant cannot be legally heard to make a grievance of this fact in this appeal.

7. Apart from the fact that it is in evidence that District Public Relation Officer was on leave during the post-lunch period of the day the impugned accident had taken place, it is to be noticed that the appellant did not take any steps to produce the log book of the official vehicle. As per the instructions, the movement of an official vehicle has to be documented by a log book entry which is not forthcoming in the present case. The petitioner cannot validly draw any acceptable sustenance from his self-serving statement and a statement of a driver colleague who would, by the very nature of things, be interested in supporting a colleague in distress.

8. The learned Tribunal recorded adequate reasons in respect of the finding holding the appellant accountable for the causing of the impugned accident.

9. In the light of foregoing discussion, both the appeals (FAOs) are held to be devoid of merit and are ordered to be dismissed.

(S. D. ANAND)
JUDGE

September 25, 2007
SRM

Note: Whether referred to reporter? Yes/No